CHAPTER 9 – JUDICIAL & ADMINISTRATIVE FRAMEWORK

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and Bharatiya Sakshya Adhiniyam 2023 (BSA) have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively with effect from 1st July, 2024.

By virtue of the New Criminal Laws, the designation of Metropolitan Magistrate has not been included under Bharatiya Nagarik Suraksha Sanhita, 2023.

TYPES OF CRIMINAL TRIAL

According to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), a criminal trial is of three types. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.

WARRANT CASES

According to section 2(1)(z) of BNSS, "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.
- The Magistrate should ensure that the provisions of Section 230 are complied with.

Section 230 of BNSS, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

DIFFERENT STAGES OF CRIMINAL TRIAL IN A WARRANT CASE WHEN INSTITUTED BY THE POLICE REPORT (SECTION 261 TO 273)

1) **First Information Report:** Under Section 173 of BNSS, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
2) **Investigation:** The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
3) **Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
4) **Plea of guilty:** After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.
5) **Prosecution evidence:** After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
6) **Statement of the accused:** Section 351 of BNSS gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.
7) **Defence evidence:** An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.

8) **Judgment:** The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgment. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

STAGES OF CRIMINAL TRIAL IN A WARRANT CASE WHEN PRIVATE COMPLAINT INSTITUTES CASE

1. If the police refuses to register an FIR, one can directly approach the criminal court under Section 175 of BNSS.
2. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not.
3. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.
4. After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not.
5. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.
6. After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

SUMMONS CASES

According to section 2(1)(x) of BNSS, "summons-case" means a case relating to an offence, and not being a warrant-case.

A summons case does not require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- A summons case can be converted into a warrant case
- The person accused need not be present personally
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

STAGES OF CRIMINAL TRIAL IN A SUMMONS CASE

1) **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
2) **Charges:** In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
3) **Plea of guilty:** The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
4) **Plea of guilty and absence of the accused:** In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
5) **Prosecution and defense evidence:** In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process

of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.

6) **Judgment:** When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

SUMMARY TRIAL (SECTION 283 TO SECTION 288 OF BNSS)

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgment of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

REFERENCE AND REVISION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

REFERENCE [SECTION 436(1)]

Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme

Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court.

REVISION

1. Sections 438 to 445 of BNSS deals with the revisional jurisdiction of the High Court and the Sessions Court. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Sessions.
2. The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice.
3. The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.
4. The High Court or the Sessions Judge have the power to interfere at any stage of the proceeding, i.e., the case and they are under a legal duty to interfere when it is brought to their notice that some person has been illegally prosecuted or subjected to harassment, or some material error of law or procedure has been committed by an inferior Court which has resulted in miscarriage of justice.
5. The revisional jurisdiction of the High Court or a Sessions Judge under Section 438 extends only to the 'inferior Criminal Courts' and it does not include a civil or revenue Court acting under Section 379 of BNSS. The Sessions Judge is inferior to the High Court and, therefore, the High Court can call for and examine the record of any proceeding before the Sessions Judge.

PROCEEDING [SECTION 438 (1)]

1. It is not only confined to cases related to a commission or trial of an offence but include all judicial proceedings taken before an inferior Criminal Court even though they are not related to any specific offence.

2. The real test is not the nature of the proceeding but nature of Court in which such proceeding is held. If it is held in an inferior Criminal Court, the revisional jurisdiction of the High Court or Sessions Judge would extend to such proceeding under Section 438 (1).
3. The revisional Court has the power to order the release of offender on bail or bond under Section 438(1). The discretion in this regard should, however, be used judicially considering all the circumstances of the case.
4. Dismissal of revision by the High Court without assigning reasons is not sustainable and matter may be remitted to the Court for reconsideration.

INTERLOCUTORY ORDER [SECTION 438 (2)]

1. What is an interlocutory order has always been a debatable issue, more so, because it has not been defined anywhere in BNSS. An order which is not final but merely provisional or temporary is generally called an interlocutory order.
2. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders.
3. The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 438(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted to 'intermediate' or 'quasi-final' orders which are not purely interlocutory in nature.

NO SECOND REVISION [SECTION 438 (3)]

1. Section 438(3) permits only one revision therefore if an application is made to a Sessions Judge and he is of the opinion that it should be referred to the High Court, then a fresh application for revision can be made to the High Court.
2. But the sub-section bars an application for the revision to the High Court if a person has already applied for it to the Sessions Judge or vice versa.

3. A person can directly move a revision application to the High Court without first approaching the Sessions Judge. But if he moves the Sessions Judge he cannot thereafter approach the High Court for another revision.
4. The general rule in this regard is that a concurrent jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior Court, i.e., the Sessions Judge in the context of Section 438(3) unless exceptional grounds for taking the matter directly to the higher Court (High Court in this case) are made out.
5. Under Section 439 of BNSS, the revision Court may make an order for further inquiry.
6. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 439 of BNSS is not co-extensive with Section 438 of BNSS but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 438 of BNSS.

SESSIONS JUDGE'S POWERS OF REVISION (SECTION 440 OF BNSS)

1. In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Section 442(1) of the Sanhita.
2. Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.
3. Thus, while hearing a case records of which have been called for revision by himself, the Sessions Judge has the same powers as the High Court has under Section 442 of the Sanhita.
4. An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter.
5. The High Court can exercise revisional powers under this section either *suo motu*, that is, on its own initiative or on a petition of any aggrieved party or any other person. The exercise of revisional power by the High Court is, however, subject to **two limitations** which are as follows:

a. Where a person or someone on his behalf has made an application for revision before the Sessions Judge under Section 440 (3), no further revision can be entertained by the High Court at the instance of such person; and

b. Where an appeal lies but it was not availed of by the person, no revision can be entertained by the High Court at the instance of the party who could have appealed but did not do so.

The High Court may even direct additional evidence to be taken in case of a revision against discharge of the accused in the interest of justice. But otherwise the jurisdiction of the High Court in a criminal revision is drastically restricted and it cannot embark upon re-appreciation of the evidence.

Section 442(1) provides that in the exercise of revisional jurisdiction, the High Court may exercise any of the powers conferred on it as a Court of Appeal subject to exceptions. These exceptions are:

a. In an appeal, the High Court is empowered under Section 427(a) to reverse an order of acquittal into conviction and vice versa, but in its revisional power it cannot convert a finding of acquittal into a conviction as per sub-section (3) of Section 442. It has no jurisdiction to convert finding of acquittal into one of conviction by seeking recourse to indirect method of ordering retrial.

b. In appeal, the High Court will interfere if it is satisfied about the guilt of the accused but in revision it may interfere only when it is brought to its notice that there has been miscarriage of justice.

c. An appeal cannot be dismissed unless the accused or his pleader is afforded an opportunity to be heard but in revision the accused is to be given opportunity to be heard only if the order to be passed is going to be prejudicial to him.

The revisional power of the High Court may be said to be wider in scope than its appellate powers in the sense that the High Court can correct irregularities or improprieties of procedure which come to its notice. Again, the provision of abatement of appeal on death of the accused does not apply to revision petition and it can exercise its revisional power even after the death of the accused.

As already discussed in the context of Section 438 (2) the High Court shall not use its revisional power in relation to an interlocutory order passed by an inferior criminal Court in any appeal, inquiry, trial or other proceeding.

Though the High Court is not empowered to set aside an order of acquittal in exercise of its revisional jurisdiction but where the acquittal is based on compounding of an offence and the compounding is invalid in law, such an acquittal may be set aside by the High Court in the exercise of revisional powers.

Though the High Court has no power to set aside an order of acquittal and convert it into conviction of the accused under this section but it has the power to direct re-trial of the case when there has been patent illegality or gross miscarriage of justice in the findings of the inferior Court.

The High Court should order re-trial of the case under its revisional jurisdiction only in very exceptional cases where the "interests of public justice require interference for the correction of gross miscarriage of justice". It cannot be exercised merely because the inferior Court has misappreciated the evidence or taken a wrong view in interpreting any provision of law.

NO REVISION WHERE RIGHT TO APPEAL EXISTS

Section 442(4) provides that the party having right of appeal cannot apply for revision. BNSS provides a remedy, by way of appeal under Chapter XXXII and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise of power of revision *suo motu*. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

REVISION MAY BE TREATED AS APPEAL

Section 442(S) vests a discretionary power in the High Court to treat a revision petition as an appeal and deal with it under its appellate jurisdiction under Chapter XXXII. But it can do so when an appeal against the order of the inferior Court lies but the petitioner has filed a revision under an erroneous belief that an appeal does not lie and when it is in the interest of justice to do so.

ENHANCEMENT OF SENTENCE

The High Court, under its revisional jurisdiction does not exercise power of enhancing the sentence in every case in which the sentence passed appears to be inadequate. It would interfere when it is convinced that the sentence passed is manifestly and grossly inadequate. The District Magistrate, a Sessions Judge or the Government pleader may draw the attention of the High Court to a sentence which is inadequate and deserves to be enhanced or the High Court can also suo motu call for the record of a particular case where it is of the opinion that the sentence awarded is grossly inadequate.

There is no limitation on the power of the High Court as regards enhancement of sentence to the extent of maximum prescribed by the BNS, except in cases tried by Magistrates. But before doing so, the Court has to be issued a show-cause notice against the enhancement of his sentence.

REDUCTION OF SENTENCE

If after hearing the State, i.e., the Government pleader, the High Court comes to a conclusion that the sentence imposed on the accused is too severe and needs to be reduced, it may reduce it exercising its revisional jurisdiction. However, it cannot be reduced below the prescribed statutory limit, if any, provided in the Bharatiya Nyaya Sanhita or the relevant Act.

FACT FINDING

The jurisdiction of the High Court in revision of criminal cases is severely restricted and confined only to the questions of law. It cannot embark upon a re-appreciation of evidence. The High Court does not normally interfere with a concurrent finding of fact. The High Court in exercise of its revisional power will not go into the question of sufficiency of material before the lower Court for its decision or order. Where the trial has dealt with the matter fully, the High Court will not interfere and disturb the order of the trial Court. While disposing of revision petition the High Courts must ensure that the principles of natural justice are not violated.

ICSI Supplement runs into multiple pages, however, this Amendment Sheet for June 25 looks brief because the ICSI Supplement covers the amendments not just for June 25 but also for the previous attempt ie December 24.

IN CASE, IF YOU HAVENT WATCHED THE PREVIOUS AMENDMENTS, THEN THE LINK TO WATCH AMENDMENTS FOR DECEMBER 2024

https://www.youtube.com/live/3T8b2-x-0-g?si=Co-6K4fVjrtrxSAT

NOTE: Notes for Dec 24 Amendment lectures are in the description box of the YouTube Video itself